

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

VAN JENKINS #172475,

Plaintiff,

NO. 4:19-cv-10738

v

HON. MATTHEW F. LEITMAN

PAM MUELLER, NICK WHITE
and TKC HOLDINGS,

MAG. PATRICIA T. MORRIS

Defendants.

Van Jenkins #172475
In Pro Per
Gus Harrison Correctional Facility
2727 East Beecher Street
Adrian, MI 49221

Allan J. Soros (P43702)
Assistant Attorney General
Attorney for MDOC Defendant White
Michigan Department of Attorney General
Corrections Division
P.O. Box 30217
Lansing, MI 48909
(517) 335-3055

**MDOC DEFENDANT WHITE'S MOTION TO REVOKE
IN FORMA PAUPERIS STATUS UNDER § 1915(g)**

MDOC Defendant Nick White, by counsel, pursuant to 28 U.S.C. § 1915(g) and Fed. R. Civ. P. 12(b)1, moves the Court to enter its Order revoking *in forma pauperis* status, based upon those grounds set forth in MDOC Defendant's accompanying brief.

Concurrence in this motion has not been sought because Plaintiff is an incarcerated prisoner proceeding in *pro se*.

WHEREFORE, MDOC Defendant White requests that the Court grant his Motion to Revoke *In Forma Pauperis* Status Under § 1915(g).

Respectfully submitted,

s/ Allan J. Soros
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Date: September 6, 2022

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**MDOC DEFENDANT'S BRIEF IN SUPPORT OF MOTION TO
REVOKE *IN FORMA PAUPERIS* STATUS UNDER § 1915(g)**

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CONCISE STATEMENT OF ISSUES PRESENTED

1. Plaintiff has been allowed to proceed in this case. However, 28 U.S.C. § 1915(g) prohibits proceeding in a case in which a prisoner that has obtained three litigation strikes. Plaintiff had accrued more than three litigation strikes prior to filing the instant action. Should the Court revoke *in forma pauperis* status in this matter?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Authority: The Sixth Circuit Court of Appeals has upheld the constitutionality of “three strike” rule. *Wilson v. Yaklich*, 148 F.3d 596, 602-606 (6th Cir. 1998), *cert. denied*, 525 U.S. 1139 (1999).

STATEMENT OF FACTS

Plaintiff, Van Jenkins, (“Jenkins”), is a *pro se* prisoner who is currently confined in the Michigan Department of Corrections (“MDOC”) at the Gus Harrison Correctional Facility (ARF), Adrian, Michigan. Jenkins’ Complaint is filed under 42 U.S.C. § 1983 and protests infringement of his civil rights. “In this action, Jenkins appears to allege that the Defendants retaliated against him and/or interfered with his prison mail in response to his filing certain complaints against them.” (See ECF No. 46, PageID.663.) Jenkins’ request to proceed *in forma pauperis* was granted on March 19, 2019, despite having three or more litigation strikes. (ECF No. 5).

ARGUMENT

- I. **Plaintiff has been allowed to proceed *in forma pauperis* in this case. However, 28 U.S.C. § 1915(g) prohibits proceeding in a case in which a prisoner that has obtained three litigation strikes. Plaintiff had accrued more than three litigation strikes prior to this Court’s order granting *in forma pauperis* status. The Court should revoke *in forma pauperis* status in this matter.**

28 U.S.C. §1915(g) provides as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions,

while incarcerated or detained in any facility, **brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted**, unless the prisoner is under imminent danger of serious physical injury. (Emphasis added).

The Sixth Circuit Court of Appeals upheld the constitutionality of 28 U.S.C. 1915 (g) in *Wilson v. Yaklich*, 148 F.3d 596, 602-606 (6th Cir. 1998), *cert. denied*, 525 U.S. 1139 (1999). A prisoner with three “strikes” cannot be allowed to proceed using periodic payments, and is obligated to pay the full fee *at the time their complaint* is submitted. *In re Alea*, 286 F.3d 378 (6th Cir. 2002).

In his Complaint, Jenkins does not acknowledge that he has received three or more litigation strikes, and did acknowledge any previous lawsuits. Both the Eastern District of Michigan in *Van Jenkins v. Mutschler, et al.*; USDC-ED No. 2:21-cv-10582, and the Western of Michigan in *Van Jenkins v. SOM*, USDC-WD No. 1:22-cv-82 have denied Van Jenkins’ requests to proceed *in forma pauperis* in light of his past litigation strikes and there is no valid reason why Van Jenkins should be granted *in forma pauperis* in this litigation.

CONCLUSION AND RELIEF REQUESTED

Jenkins' *in forma pauperis* status should be immediately revoked.

Respectfully submitted,

s/Allan J. Soros

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Date: September 6, 2022

Soros\FED Intake\Jenkins 2022-0356639-A\Mot & BIS to Revoke IFP

CERTIFICATE OF SERVICE

I certify that on **September 6, 2022**, I electronically filed **MDOC DEFENDANT WHITE'S MOTION TO REVOKE *IN FORMA PAUPERIS* STATUS UNDER § 1915(g) and BRIEF IN SUPPORT**, with the Clerk of the Court using the ECF system and I certify that my secretary, Joleen McQuiston, has mailed by U.S. Postal Service the papers to the following non-ECF participant(s):

Van Jenkins #172475

In Pro Per

Gus Harrison Correctional Facility
2727 East Beecher Street
Adrian, MI 49221

s/ Allan J. Soros
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